Office Supreme Court, U. S.
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JAMES D. MAHER
CLERK

No. 31 Orig.

Supreme Court of the United States.

October Term, 1916.

Ex Parte,

PARK SQUARE AUTOMOBILE STATION

v.

[redacted]

Motion for Leave to File Petition for Writ of Mandamus and Petition for Writ of Mandamus.

ADDISON C. GETCHELL & SON, LAW PRINTERS, BOSTON, MASS.

Supreme Court of the United States.

October Term, 1916.

PARK SQUARE AUTOMOBILE STATION

v.

AMERICAN LOCOMOTIVE COMPANY.

Motion for Leave to File Petition for Writ of Mandamus.

And now comes the Park Square Automobile Station, the plaintiff in error in case entitled Park Square Automobile Station, plaintiff in error, against American Locomotive Company, defendant in error, and being case number 140 on the docket of this Honorable Court, and moves this Honorable Court for leave to file the accompanying petition for a writ of mandamus.

By its Attorneys,

SAWYER, HARDY, STONE & MORRISON,

ALBERT TERRIEN.

Supreme Court of the United States.

October Term, 1916.

PARK SQUARE AUTOMOBILE STATION

v.

AMERICAN LOCOMOTIVE COMPANY.

Petition for Writ of Mandamus.

(1) Respectfully represents the Park Square Automobile Station, plaintiff in error in the case pending before this Honorable Court and numbered 140 on the docket of this Honorable Court, hereinafter called the plaintiff.

(2) And the plaintiff further represents that, as appears by page 2 of the record in said case numbered 140, the plaintiff is a corporation duly organized under the laws of the State of Maine and formerly having a usual place of business at Boston in the County of Suffolk and Commonwealth of Massachusetts, and that the defendant is a corporation duly organized under the laws of the State of New York and having a usual place of business at Manchester in the County of Hillsborough and State of New Hampshire.

(3) And the plaintiff further represents that, as appears by the record in said case numbered 140, it instituted suit against the defendant in the Superior Court for Hillsborough County in the State of New Hampshire to recover damages for the breach of a

contract, the writ in said case being dated May 25, 1914, and being returnable to the Superior Court for Hillsborough County in said State of New Hampshire on the 3d Tuesday of September A.D. 1914.

(4) And the plaintiff further represents that, prior to the bringing of the said suit in the said Superior Court for Hillsborough County, it had instituted a suit against the defendant in the Superior Court for Suffolk County for said Commonwealth of Massachusetts, but that said last-named suit was dismissed because the defendant had withdrawn from the Commonwealth of Massachusetts, and the service attempted to be made upon it was held to be insufficient for that reason; and that, thereupon, the plaintiff instituted the above-entitled action in the Superior Court for Hillsborough County in the State of New Hampshire, the defendant there having property and a usual place of business.

(5) And the plaintiff further represents that, as appears by the record in said case numbered 140 (see pages 2, 3, 4, and 5), the transactions which gave rise to the said case occurred in said Boston; that the witnesses necessary to prove the plaintiff's case largely reside in and around said Boston or do business in said Boston; that trials in the said Superior Court for Hillsborough County in the State of New Hampshire are held either in the cities of Manchester or Nashua, New Hampshire, both of which cities are readily accessible to the City of Boston, and easily reached by train, the distances being only fifty-six miles and forty miles respectively.

(6) And the plaintiff further represents that, on or about September 17, 1914, the defendant filed a petition

and a bond in said Superior Court for Hillsborough County for the removal of the above-entitled case to the District Court of the United States for the Southern District of New York; that upon a hearing upon said petition the said Superior Court declined to give up jurisdiction of the said suit, denying the plaintiff's motion to remove the said suit to the said District Court of the United States for the Southern District of New York; that thereafter one Oliver W. Branch, presiding Justice of said Superior Court for Hillsborough County, ordered that a certain question of law arising in the trial of the case be transferred to the Supreme Court for final decision, said question of law being whether the order of the said Justice denying the defendant's petition to remove was correct; that thereafter the defendant abandoned its proceeding to remove the said case to the District Court of the United States for the Southern District of New York; that the said case reserved for the decision of the Supreme Court of the State of New Hampshire was discharged; and that on January 20, 1915, the defendant filed a petition for leave to amend its petition for removal theretofore filed in said State Court and petitioned to remove the said suit to the District Court of the United States for the Northern District of New York, and filed a new removal bond for said purpose.

(7) And the plaintiff further represents that said State Court denied the prayer for removal of the said case from the said State Court to the District Court of the United States for the Northern District of New York, but that the defendant duly entered its papers for removal in the said District Court of the United States for the Northern District of New York on or

about March 29, 1915; and that the plaintiff on the same day filed in the said District Court of the United States for the Northern District of New York a motion to remand the above-entitled suit on the ground, among other things, that this suit, which was one by a Maine corporation against a New York corporation brought in the said Superior Court of the State of New Hampshire, could not be removed to the District Court of the United States for the Northern District of New York, which motion to remand was denied by the District Judge (see 222 Fed. Rep. 979), so that the above-entitled suit, by orders of the Justice and of the Judge of the respective Courts, is now pending both in the Superior Court for Hillsborough County in the State of New Hampshire and in the District Court of the United States for the Northern District of New York.

(8) And the plaintiff further represents that, on April 29, 1915, it filed a petition for the issuance of a writ of error directed from the District Court of the United States for the Northern District of New York to the Supreme Court of the United States to bring before this Honorable Court the jurisdictional questions as to removal, which said writ of error was duly allowed and is now pending before this Honorable Court in the said case numbered 140.

(9) And the plaintiff further represents, as appears by the docket of this Honorable Court, that no motion to dismiss said writ of error has ever been filed, but that the defendant in its brief recently filed has argued that this writ of error should be dismissed for want of jurisdiction, on the ground that no final decree has been entered in the above-entitled case.

(10) And the plaintiff further represents that, if,

for the reasons urged in the defendant's brief, the above-entitled case must be tried out in full upon the merits in the said District Court of the United States for the Northern District of New York, before this Honorable Court may pass upon the jurisdictional question of removal, a serious hardship will be done the plaintiff, and thereby the plaintiff will practically be deprived of justice and of the right to try its case, for the reason that the said trial would have to take place within the Northern District of New York, and that, to get the benefit of the testimony of the witnesses for the plaintiff, it would be necessary to expend large sums of money toward the transportation, board, and hotel bills of the various witnesses necessary to prove the plaintiff's case, which expense would be so considerable as practically to prevent the plaintiff, which now is no longer actively engaged in business operations, from even trying its case at all in the said District Court of the United States for the Northern District of New York.

(11) And the plaintiff further represents that, in view of all the circumstances hereinbefore set forth in detail, the refusal to remand the said case to the State Court wherein it was started is a practical deprivation of the plaintiff's right to try its case at all, amounts to an abuse of discretion upon the part of the said District Judge, and calls for the application of the exceptional rule laid down in *Virginia* v. *Reeves*, 100 U.S. 313, at page 323, and referred to in *Ex parte Harding*, 219 U.S. 363, at page 369 (see also *Ex parte Roe*, 234 U.S. 70, at page 73).

Wherefore the plaintiff prays this Honorable Court that a writ of mandamus may issue, directing and

commanding the said District Judge, the Honorable George W. Ray, District Judge of the United States for the Northern District of New York, or whoever else may be the District Judge of said Court, to vacate such orders and decrees as have been made, refusing to remand the said case to the State Court wherein it was started, and to make such other and further orders and decrees as will be necessary or apt for remanding the above-entitled case to the State Court in which it was instituted; and for such other and further orders and decrees as to this Honorable Court may seem meet and proper and the circumstances of the case may require.

PARK SQUARE AUTOMOBILE STATION,
By its Attorneys,
SAWYER, HARDY, STONE & MORRISON,
ALBERT TERRIEN.

COMMONWEALTH OF MASSACHUSETTS.

SUFFOLK, ss. BOSTON, January 11, 1917.

Then personally appeared Edward C. Stone, of counsel for the said plaintiff, and made oath that he had read the foregoing petition, and that the matters therein contained are true, except as to those matters which are stated to be upon information and belief, and, as to those, he believes them to be true.

Before me,
GAY GLEASON,
Justice of the Peace.

Office Supreme Court, U. S.
FILED
MAY 18 1917
JAMES D. MAHER
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 31, Original.

EX PARTE THE PARK SQUARE AUTOMOBILE STATION, PETITIONER FOR A WRIT OF MANDAMUS.

THE ANSWER OF THE HONORABLE GEORGE W. RAY, JUDGE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK, TO THE ORDER MADE IN THE SAID MATTER TO SHOW CAUSE WHY THE PRAYER OF THE SAID PETITION SHOULD NOT BE GRANTED.

21ST MAY, 1917.

I, the above-named judge, certify and return pursuant to the said order that all the proceedings in the suit instituted by the petitioner against the American Locomotive Company and mentioned in the petition are fully set out in the record of the said district court and a copy of the said record

and of the opinion given by the said judge upon hearing the matters complained of in the petition is annexed to and made part of this answer.

GEO. W. RAY,
Judge of the said District Court.

ROBERT G. DODGE,
Counsel for the said Respondent.